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March 2, 1988

The Honorable Carl J. Kunasek
President of the Senate
State Capitol - State Senate
Phoenix, Arizona 85007

The Honorable Joe Lane
Speaker of the House of Representatives
State Capitol - House Wing
Phoenix, Arizona 85007

Re: I88-035 (R88-027)

Dear Mr. President and Mr. Speaker:

You have asked for an interpretation of Ariz. Const.,
art. VIII, Pt. 1, § 6, which provides:

The general election laws shall apply to
recall elections in so far as applicable.
Laws necessary to facilitate the operation of
the provisions of this article shall be
enacted, including provision for payment by
the public treasury of the reasonable special
election campaign expenses of such officer.

You have specifically asked the following questions:

Does this constitutional provision
require the legislature to pay the reasonable
recall campaign expenses of a state officer
before the officer incurs the expenses or may
the legislature reimburse the officer for the
expenses after the election is held? If these
expenses must be paid before they are
incurred, how should the monies be
appropriated to provide for the return of the
monies if the election is not held?

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We find four requirements contained in the Arizona Constitution regarding the payment of recall campaign expenses. First, the legislature must enact such a provision.^{1/} Second, the expenses are to be paid by the public treasury. Third, they

^{1/}At present, there are no Arizona statutes on this subject. A.R.S. § 19-218 was repealed by Laws 1973 (1st Reg. Sess.) Ch. 159, § 23, first enacted in Laws 1913 (3rd Spec. Sess.) Ch. 91, §§ 12 to 14. It provided:

A. The officer against whom a recall petition has been filed, and who does not offer his resignation within five days thereafter, shall be paid from the general fund of the state, county or other municipality, his reasonable special election campaign expenses in not to exceed the following amounts:

1. A state elective officer, five hundred dollars.

2. A member of the legislature or a county elective officer, two hundred dollars.

3. A municipal elective officer, one hundred fifty dollars.

B. The amount shall be paid after the special election has been held upon an order by the officer with whom the recall petition was filed, after filing a verified itemized account of his campaign expense, which shall be filed within ten days after the election. If the elective officer is a state officer and his verified itemized account is approved by the secretary of state he shall certify the account to the commissioner of finance and it shall be paid as other claims against the state are paid.

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must be reasonable.^{2/} Fourth, there must be payment for "expenses." "Expense" means "that which is expended, laid out or consumed; an outlay; charge; cost; price." State ex rel. Leis v. Ferguson, 149 Ohio St. 555, 80 N.E.2d 118, 120 (1948) quoting Black's Law Dictionary (3rd Ed.); See also Webster's Third New International Dictionary (1976) at page 800 ("something that is expended . . ."). The definition of "expense" uses the past tense, "expended." We think that if the framers of the constitution had intended that payment is required to be made in advance, they would have inserted a word such as "anticipated" before the word "expenses."

The framers of the constitution have given no additional guidance on the subject, but have instead left the matter of details such as the method, timing and calculation of payment to the discretion of the legislature.

Therefore, the provisions of the Arizona Constitution do not require the legislature to pay the recall campaign expenses of a state officer before expenses are incurred or an election is held. The legislature may enact legislation providing for post-election reimbursement of an officer for reasonable recall campaign expenses.^{3/}

Sincerely,



BOB CORBIN

BC:JGF:gm

^{2/}While your request does not raise the issue, we also note that the Arizona Constitution gives to the legislature the authority to set statutory limits on what would constitute "reasonable . . . expenses."

^{3/}Our answer is limited to the specific questions you have asked. We do not mean to imply that the legislature has no discretion to select a time or times prior to the election to make payments after expenses have been incurred.